Filed 6/15/07 In re Jennifer C. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JENNIFER C., a Person Coming Under the Juvenile Court Law.	B189978 c/w B193308 (Los Angeles County Super. Ct. No. CK54498)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JANICE G., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Emily A. Stevens, Judge. Affirmed and remanded with directions.

Andrea Renee St. Julian, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Larry Cory, Assistant County Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

In this consolidated appeal, appellant Janice G. (mother) challenges several juvenile court orders. First, she objects to the January 30, 2006, order, designating a plan of legal guardianship for her daughter, Jennifer C. (Jennifer), on the grounds that (1) the juvenile court did not appoint a guardian at the time it designated the plan of guardianship; (2) the juvenile court stayed the guardianship order, in excess of its jurisdiction; and (3) substantial evidence failed to support the order for the plan of legal guardianship. Mother also asserts that the juvenile court's orders should be reversed because respondent Department of Children and Family Services (DCFS) failed to provide proper notice as required by the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.).

In her subsequently filed notice of appeal, mother contends that the juvenile court's July 31, 2006, and August 17, 2006, orders designating a plan of guardianship and implementing that plan should be reversed.

To the extent mother attacks the juvenile court's order designating a plan of legal guardianship and then staying that plan, her appeal is moot. On January 30, 2006, the juvenile court merely designated a plan of legal guardianship for Jennifer; it did not order a guardianship at that time. However, an order of guardianship was put in place by August 17, 2006, when grandmother's letters of guardianship were filed. Thus, we must address mother's challenge to that order, namely that DCFS did not undertake a proper investigation of the guardian's home. We are not convinced. Substantial evidence indicates that a proper investigation was completed.

As for mother's complaint that DCFS did not comply with ICWA's notification requirements, DCFS concedes in its respondent's brief that notice was deficient. Those deficiencies, however, do not compel reversal of the juvenile court's orders. Rather, pursuant to *In re Brooke C.* (2005) 127 Cal.App.4th 377, this matter is remanded for the limited purpose of allowing DCFS to provide proper ICWA notice.

Accordingly, we affirm the juvenile court's orders and remand the matter with directions to the juvenile court to direct DCFS to provide notice as required by the ICWA and California law and then determine whether the ICWA applies.

FACTUAL AND PROCEDURAL BACKGROUND

Welfare and Institutions Code Section 300[1] *Petition*

This dependency matter concerns Jennifer, born November 1990.

On January 29, 2004, the Gardena Police Department responded to a 911 telephone call of screams from mother and Jennifer's home. When the police questioned Jennifer, she indicated that mother had "whooped [her] with a belt." The police officer observed that Jennifer had a welt on her arm.

When the police questioned mother, at first, she denied that she hit Jennifer. Mother also initially misled the officer by stating that Jennifer incurred the welt during a fight at school. Mother eventually confessed that she hit Jennifer one time with a belt, but rationalized that Jennifer had hit her and kicked her first. According to mother, Jennifer was "out-of-control" and did not listen to anything mother said. The police recovered a leather belt from under mother's mattress.

As a result of the incident, mother was arrested for a felony violation of Penal Code section 273d, subdivision (a), corporal injury on a child, and Jennifer was taken into custody. While the police officer was arresting mother, she screamed at Jennifer: "I'm going to jail because of you. You told the police I hit you with a belt [*sic*] this is all your fault."

Jennifer was in the seventh grade and 13 years old at the time of the incident. She told the emergency response children's social worker (CSW) that she had argued with mother because her math teacher had called to tell mother that Jennifer spoke with a girl at school that mother had forbidden her to talk with. Jennifer and the other girl fought with two other girls at school, but Jennifer's friend allegedly instigated the fight. Jennifer was suspended for two days.

Jennifer also informed the CSW that mother hit her with a belt approximately once a month.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Jennifer and mother agreed that Jennifer's maternal grandmother, Roslyn G. (grandmother), would be an acceptable caretaker. But, there were some safety issues that grandmother had to address before DCFS could place Jennifer in that home.

The CSW interviewed mother at the jail where she was housed after her arrest. Mother accused Jennifer of being out of control and assaulting mother. She blamed Jennifer for the abuse.

On February 3, 2004, DCFS filed a section 300 petition on behalf of Jennifer, alleging that on or about January 29, 2004, and on numerous prior occasions, mother physically abused Jennifer by striking her about her body with a belt, resulting in Jennifer sustaining swelling, redness, and a bruise to her arm.

Detention Hearing

At the detention hearing on February 3, 2004, mother argued that Jennifer attacked her and that she had never hit her daughter before. Mother was in danger of losing her teaching credential. Mother requested a voluntary resolution of the matter, pursuant to section 301, but did not request that the juvenile court return Jennifer to her custody. Also, mother no longer agreed that Jennifer should reside with grandmother.

According to Jennifer, she wanted to return to mother; she stated that she was not afraid of her. Jennifer's attorney, however, was concerned that mother was "laying the blame on Jennifer."

The juvenile court indicated that mother's and Jennifer's stories conflicted. It did not believe that this was the first time this sort of incident occurred. Also, the juvenile court noted that mother's request for a voluntary resolution was unusual because she did not ask for Jennifer to be returned to her custody. In response, mother explained that she was ambivalent about Jennifer returning to the home. To which, the juvenile court stated that if mother was ambivalent, it had a prima facie case to detain Jennifer.

Grandmother also was present at the detention hearing. She explained to the juvenile court that she ran two residential homes for developmentally disabled young men. At that time, she had two residents at her five-bedroom home in Orange County. She also had a three-bedroom home in Long Beach, with a bachelor's quarters where she

slept and where Jennifer slept when she visited. She confirmed that all of her employees had submitted to criminal records background checks. She also stated that Jennifer would never be left alone because even her own clients could not be left unattended. Further, there always would be an approved adult, if she was not there, when Jennifer was on the property.

Over DCFS's objection, the juvenile court detained Jennifer with grandmother. Addressing DCFS's concerns, the juvenile court stated that grandmother could submit to a criminal records check after the hearing, but opined that if grandmother had a criminal record, she would not have been able to run her residential homes. The juvenile court instructed grandmother that Jennifer had to live with her at the Long Beach facility,[2] where there were separate living quarters. Also, Jennifer could not be left alone on the property and a DCFS-approved adult had to supervise her at all times. The juvenile court further ordered that all adult individuals at both homes were to be live-scanned.

Moreover, the juvenile court ordered reunification services for mother, including parent education, individual counseling, and conjoint counseling. Mother also was allowed reasonable monitored visitation.

Adjudication/Disposition Hearing

Before the adjudication/disposition hearing, mother informed the investigating CSW that she did not have any American Indian ancestry. Jennifer's father told the CSW that Jennifer's paternal great-grandmother may have had some Blackfeet ancestry. He could not, however, provide an exact spelling of her name, her date of birth, or the date of her passing. He also did not know if she was a registered tribal member. He and Jennifer's paternal grandmother were not registered tribal members. He did not have a telephone number or address for Jennifer's paternal grandmother; he only knew that she lived in Michigan.

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2 On February 5, 2004, the juvenile court, by stipulation, modified its order, allowing Jennifer to reside at either the Orange County or Long Beach facility.

Based upon her interview with father, the investigating CSW sent, by certified mail, return receipt requested, State of California 318 and 319 forms to the Blackfeet Tribe, Bureau of Indian Affairs in Sacramento and Washington, D.C., on February 17, 2004. She attached copies of the notices to DCFS's jurisdiction/disposition report dated February 25, 2004. No returned receipts or any response from the Blackfeet Nation were attached to the DCFS report.

Meanwhile, mother had altered her story and denied that she had hit Jennifer with a belt or that she saw any marks on Jennifer. She also stated that she had never used a belt on Jennifer and she did not remember telling the police that she had hit her daughter. Mother had been employed as a substitute teacher, but lost her job as a result of the case-related child abuse arrest.

A detective from the Gardena Police Department verified that his agency had filed a misdemeanor count for child abuse/corporal punishment against mother. Also, mother's version of the incident on January 29, 2004, directly contradicted the police report. The police report indicated that mother felt Jennifer was out of line and in need of punishment, so she struck her with a belt. The police officer observed a six-inch long and three-quarter-inch wide red, raised welt on Jennifer's left arm. Despite the claim that Jennifer had "attack[ed]" her and her vivid description of the alleged assault, the police officer did not observe any marks on mother.

Grandmother was reluctant to speak with the investigating CSW because mother had gotten angry at her for speaking with DCFS personnel. She was willing to say that mother's emotional and mental states were questionable when she went into a rage. She also believed that Jennifer had gone through a lot "emotionally." Since the detention hearing, mother had been calling Jennifer every day, blaming her for the events that had transpired, including her arrest and job loss. Jennifer cried after the telephone calls.

Jennifer told the investigating CSW that, at times, she was afraid of mother. She wanted to remain with her grandmother. Jennifer then showed the CSW a letter that mother had written to her. It stated: "Jennifer you need to tell the judge the truth that

you hit me first, otherwise you will never get back home . . . God will forgive you if you tell the truth."

At the February 25, 2004, hearing, mother and DCFS mediated an agreement to amend the section 300 petition. The amended language indicated that there was an ongoing parent-child conflict between Jennifer and mother, which escalated on January 29, 2004, into a physical confrontation wherein law enforcement intervened and Jennifer received a bruise from a belt. Also, DCFS advised the juvenile court that Jennifer did not wish to reside with mother. The juvenile court then declared Jennifer a dependent pursuant to section 300, subdivisions (a) and (b).

Jennifer's father appeared at the hearing. He waived reunification services. Also, he advised the juvenile court that he had no objection to grandmother adopting Jennifer or assuming legal guardianship if mother was unable to reunify.

The juvenile court then ordered that mother have monitored visits with Jennifer, giving DCFS the discretion to lift the monitor. It also ordered mother and Jennifer to participate in conjoint counseling, when deemed appropriate by Jennifer's therapist. Mother and grandmother were also ordered to participate in conjoint counseling. Finally, mother was instructed to participate in individual counseling to address inappropriate physical discipline, adolescent rearing practices, and anger management.

Notably, at the hearing, mother stated that she was "in total agreement with [Jennifer] going with her grandmother."

March 2004 Progress Hearing

At the March 25, 2004, progress hearing, the juvenile court learned that mother told the CSW on March 2, 2004, that she was not ready to participate in counseling and that she had a very busy schedule; she did agree to enroll in a parenting education class. A week later, on March 9, 2004, mother told the CSW that she had enrolled in a parenting course. However, when the CSW called to verify mother's claim, a program representative indicated that mother had not enrolled in the class.

At this time, mother also blamed grandmother for the situation, stating: "My mother does not understand the problem she has created for me."

DCFS reported that Jennifer had begun individual counseling on March 16, 2004, at the Jewish Family and Children Services.

Mother did provide the juvenile court with an anger management certificate of completion, dated March 18, 2004. That certificate showed that she had completed only three hours of education/training. While the juvenile court acknowledged mother's completion of an anger management course, it commented that it had previously ordered mother to participate in individual counseling to address inappropriate discipline, adolescence, and other issues. It advised mother to enroll in individual counseling "right away."

August 2004 Six-month Review Status Hearing

For the August 3, 2004, six-month review status hearing, DCFS reported that Jennifer was working on better coping skills in therapy; grandmother had even noticed an improvement. Jennifer continued to attend individual counseling at the Jewish Community Center and had begun another counseling program at the Martin Luther King, Jr., Clinic. She was performing at grade level.

Mother told the CSW that she was happy with the way Jennifer was being treated. Originally, she felt that grandmother was sabotaging her and was part of the reason why Jennifer was removed from her custody. Now, she was pleased with the services that Jennifer was receiving and wanted Jennifer to continue to reside with grandmother.

Mother was attending parenting education classes and had 10 sessions to complete by the August hearing. She had enrolled in individual counseling on July 19, 2004.

Because mother was only in partial compliance with the court-ordered case plan, DCFS recommended six more months of family reunification services.

At the hearing, Jennifer's attorney asked that mother not discuss the case with Jennifer or make derogatory remarks about grandmother. According to Jennifer, that had occurred as recently as two weeks before the hearing. The juvenile court then admonished mother that she was not allowed to speak with Jennifer about negative subjects, including the case, problems she had with Jennifer, and things that she believed Jennifer needed to do.

The juvenile court allowed mother and Jennifer to have unmonitored visits. Indicating that mother was making partial progress, the juvenile court continued the matter for another six months.

February 2005 12-month Status Review Hearing

In its status report, DCFS reported that there were no major issues with Jennifer during this period of supervision. Jennifer and mother were maintaining weekly visits without any problems. Jennifer was still attending counseling and was making progress. Jennifer, mother, and grandmother had started conjoint counseling. Mother had completed 42 hours of parenting education.

Based upon mother's progress, DCFS allowed her to have weekend visits with Jennifer.

Two months prior to the hearing, Jennifer told the CSW that she wanted to return to mother's home. Also, a letter from mother's parenting program, provided by mother at the hearing, recommended that Jennifer return to mother's care. DCFS recommended that Jennifer return to mother's home.

At the hearing, the juvenile court noted that it had read and considered a letter written by Jennifer. Jennifer's requests, as reflected in her letter, were inconsistent with the CSW's recommendation that Jennifer return to mother's home.

Mother then addressed the juvenile court. She claimed that she had "not had a chance to give [her] side in this ten month case." She claimed that she had assumed responsibility for the violent incident that had brought the family to the juvenile court's attention, but then asserted that Jennifer had assaulted her and mother responded "emotionally." Mother further complained that she was suffering the consequences for her emotional response because she had received a job for less pay. She also provided the juvenile court with a written statement.

After listening to mother, the juvenile court stated that mother was in compliance with the court-ordered case plan and that DCFS had provided appropriate services. But, the juvenile court wanted to know whether mother and Jennifer had resolved the case issues in counseling.

Jennifer then stated that she and mother had attended only two conjoint counseling sessions. The juvenile court responded "that's certainly not enough." Jennifer also indicated that the three weekend visits that she had had with mother were "average." Moreover, mother continued to speak negatively about grandmother. In fact, Jennifer overheard mother tell grandmother that Jennifer was to blame for the loss of her job and her unstable financial condition.

Ultimately, the juvenile court found that Jennifer could not be returned to mother because the case issues had not been resolved and, based upon Jennifer's feelings, it would be contrary to her welfare. The juvenile court again advised mother that she needed to work on resolving the issues in counseling instead of trying to contradict Jennifer.

Mother then interrupted the juvenile court and asked it to explain how she could relinquish her parental rights. It refused to do so because the case was in the reunification stage. When mother stated that she was "worn down," the juvenile court responded: "I know . . . but you can't come in here, have things not go in your direction . . . and then talk about giving up, because that indicates that you are not ready to have your daughter back."

May 2005 Progress Hearing

Between February and May 2005, mother and Jennifer visited twice with each other on the weekends. They both described the visits as "ok." They began a new program of conjoint counseling; Jennifer continued in individual counseling. DCFS no longer recommended that Jennifer return to mother's home.

In a letter written by Jennifer to the juvenile court, Jennifer stated: "I will never trust [mother]. She lies to me to try to make me hate people especially my NANA. I AM NOT READY TO GO TO MY MOM. Please I am asking you don't take me out of my grandmother['s] home. I love my mom but she depresses me no matter what she does."

August 2005 18-month Status Review Hearing

Despite conjoint counseling and weekend visits with mother, Jennifer was uncomfortable returning to mother's home. She told the CSW in July 2005 that she was

concerned about mother's erratic and unpredictable behavior. For example, mother told Jennifer, "I don't love you" and "You[r] Nana can have you," but then told her "I love you." Grandmother confirmed this behavior.

At some point, mother had told grandmother, without explanation, that she did not want her to transport Jennifer to the counseling sessions. Also, when the CSW asked mother about Jennifer's wish to remain with grandmother, mother stated: "I will call my attorney and tell him to give my mother custody."

Although DCFS acknowledged that mother was in compliance with the case plan, in light of these circumstances, it recommended that Jennifer remain with grandmother.

Mother did not attend the hearing. However, she provided a letter to the juvenile court, claiming that DCFS had changed Jennifer's placement from grandmother's Long Beach home to the Orange County location because one of the individuals residing at the Long Beach facility had a criminal history. She alleged that Jennifer would go to the Long Beach house on the weekends and that grandmother would allow her to go on excursions with one of the residents, unattended. She claimed that the resident had a criminal record. Also, she complained that she was terminated from her teaching job, was in danger of losing her teaching credential, did not have a car, and was financially unstable.

A progress report indicated that mother had attended 35 parenting education classes. The author of the report indicated that Jennifer continued to threaten mother, although the report was silent as to whether the author had ever met or spoken with Jennifer.

At the hearing, mother's attorney stated that mother "made clear that she is not going to continue to try to get her daughter back into her home at this time." Although mother signed a waiver of reunification services, her attorney did not file it. Based upon his conversations with mother, mother's attorney submitted to DCFS's recommendation that the juvenile court terminate family reunification services.

Jennifer confirmed that she agreed with DCFS's recommendation as she did not want to return to mother's home. She did, however, hope to continue to work on her relationship with her mother.

After hearing all of the evidence and argument, the juvenile court terminated mother's family reunification services. It then set the matter for a section 366.26 hearing, with the goal of legal guardianship. No one objected.

January 2006 Section 366.26 Hearing

Between August 2005 and January 2006, Jennifer described her visits with mother as "fine." She and grandmother indicated, however, that there were times that Jennifer called grandmother to pick her up due to conflicts with mother. Mother informed the CSW that she would seek reunification with Jennifer in September 2006, when Jennifer would be more mature.

DCFS also reported that Jennifer's father passed away on December 25, 2005. Jennifer suspected that mother would request custody of her in order to acquire extra funds through Jennifer's social security benefits that Jennifer would receive as a result of her father's death.

The CSW also acknowledged a letter written by mother in January 2006 in which she reacted to Jennifer's decision to spend a weekend at the residential facility with staff rather than with mother. It seemed to the CSW as if mother was hurt by Jennifer's decision.

In a letter to the juvenile court dated January 25, 2006, mother indicated that one of her brothers lived in a residential facility due to his mental illness. Though similar to her brother, mother described grandmother's clients as "antisocial Regional Center" clients. Additionally, she insinuated that grandmother was somehow responsible for the death of mother's father and the onslaught of her brother's mental illness and drug abuse. She also claimed that she was reinstated by the school district because it realized that she acted in self-defense in connection with the January 2004 incident.

By the time of the hearing, DCFS had not obtained criminal background clearances for two of the residents at grandmother's facility where Jennifer resided.

Additionally, due to some deformities in the individuals' fingerprints, a manual clearance was required. Nevertheless, on March 5, 2004, Bryan R. had been cleared through the child abuse clearance index, and Ronald L. previously was cleared through the FBI files on March 8, 2004. DCFS was continuing to work with grandmother to complete the background checks. But, based upon the information at hand, DCFS recommended that the juvenile court appoint grandmother as Jennifer's legal guardian.

Mother testified first at the hearing. According to mother, Jennifer lived at grandmother's Orange County residential facility. A paid staff person cared for her when grandmother was unavailable. Mother objected to Jennifer living there because she believed that Jennifer was at risk based upon the type of clients grandmother had. Jennifer had gone on outings with those individuals and to a park in Long Beach with one of the residents where she met that resident's brother. On the weekend, all six of grandmother's clients stayed at the Long Beach facility, under the supervision of a staff person and grandmother.

Mother did not testify that Jennifer and/or grandmother's residents were unsupervised.

When mother attempted to testify regarding issues unrelated to a plan of legal guardianship and perhaps more relevant to reunification, the juvenile court stopped her, pointing out that the parties were past the reunification stage. In fact, the juvenile court reminded mother that she had previously agreed to terminate reunification services.

While mother testified that she did not believe that grandmother was an appropriate guardian for Jennifer, she did not offer any explanation or basis for that opinion.

Following mother's testimony, the juvenile court explained that because the law frowned upon long term foster care as a permanent plan and because there was a prospective guardian, it would designate guardianship as the permanent plan, unless grandmother were not an appropriate guardian. It pointed out that each time mother raised the issue of the safety of Jennifer's placement, DCFS had investigated and found no impediments to Jennifer residing with grandmother at either of her two residential

facilities. Further, Jennifer did not reside with any individuals who had criminal records. Although the juvenile court agreed that any person who had regular contact with Jennifer needed to be checked out, the fact that grandmother had a home in Long Beach did not impact the home in Orange County, where Jennifer resided. The juvenile court then acknowledged that there was information still pending on two of the individual residents. It asked DCFS for a report confirming whether everyone in both of grandmother's homes had been cleared. It also wanted DCFS's recommendation regarding the termination of jurisdiction and a visitation plan.

During a conversation between mother's attorney and the juvenile court, the juvenile court noted that DCFS had determined that Jennifer was not at risk at her placement. It also noted that in one of mother's letters, she indicated that the Orange County residents did not have criminal records.

Grandmother then testified. She confirmed that none of her clients at the Long Beach facility had any active criminal records. She explained that when she and Jennifer visited the Long Beach location, they stayed in a separate house on the property. Moreover, because at least one of the residents had Down's Syndrome, his background check would take longer. In response, the juvenile court made clear that background checks on the individuals residing in the Long Beach home were unnecessary, but all of the individuals at the Orange County home, where Jennifer resided, had to be cleared.

Following the presentation of all evidence and argument, the juvenile court found that legal guardianship was appropriate and in Jennifer's best interests, but stayed the order pending receipt of additional information about the visitation plan and the individuals residing at grandmother's Orange County home. Jennifer's attorney agreed to prepare the guardianship papers for the next hearing.

Toward the end of the hearing, Jennifer asked the juvenile court to order family counseling. When the juvenile court inquired whether mother wanted to participate in counseling, she unequivocally responded "no." Rather, she stated that she had done all of the required counseling.

February 2006 Hearing

In February 2006, DCFS reported that it was continuing to experience trouble with obtaining results for three of grandmother's full-time residential clients and one part-time client, all of whom were associated with the Long Beach home. Because of that obstacle, grandmother agreed that Jennifer would not spend weekends at the Long Beach facility.

As for the Orange County facility, where Jennifer resided, DCFS explained that it was experiencing difficulty in obtaining the results of the criminal background checks for grandmother's full-time clients, Bryan R., Ronald L., and Ian S. Though submitted on February 1, 2006, Ian S.'s livescan was rejected and he had to rescan.

On February 24, 2006, the three clients livescanned for a second time. Unfortunately, all three scans were rejected as unreadable. The CSW explained that, pursuant to DCFS policy, the Department of Justice (DOJ) would automatically conduct a manual search for the individuals regarding any reportable criminal histories. She also advised the juvenile court that she would initiate a manual FBI search via mail.

Mother did not attend the February 27, 2006, hearing. The juvenile court declined DCFS's request for more time to evaluate grandmother's home. Instead, it indicated that the next hearing was already scheduled for July 31, 2006.

Mother's First Appeal

Mother's timely appeal from the juvenile court's January 30, 2006, and February 27, 2006, orders followed.

July and August 2006 Proceedings and Mother's Second Appeal

For the July 2006 review hearing, the CSW explained that she had met with grandmother and the Orange County residents on May 12, 2006. On that date, the CSW requested that the livescan technician process the livescans correctly for the clients. But, on May 25, 2006, CSW had to request a manual FBI name check for Ian S. because the FBI had again rejected his livescan fingerprints. Ronald L.'s and Bryan R.'s fingerprints finally went through.

The CSW further indicated that criminal clearances were received for the Orange County clients and an ASFA (Adoption and Safe Families Act) home study was approved in June 2006.

Based upon a fingerprint search, no criminal history existed in the files of the Bureau of Criminal Identification and Information, the FBI, or Child Abuse Central Index (CACI), for Ronald L. or Bryan R. In addition, based upon a name check search, no criminal history existed in the files of the FBI, the CACI, or the Bureau of Identification and Information files for Ian S.

On July 31, 2006, the juvenile court implemented the permanent plan of legal guardianship and again stayed that order pending receipt of guardianship letters. On August 17, 2006, the guardianship letters were signed and filed, thereby appointing grandmother as Jennifer's legal guardian.[3] The previously imposed stay on the juvenile court's order of plan of guardianship was lifted.

Mother timely appealed the juvenile court's July 31, 2006, and August 17, 2006, orders.

The two appeals have been consolidated.

DISCUSSION

I. *Juvenile Court's Order of Legal Guardianship*

A. Mother's appeals of the January 30, 2006, and July 31, 2006, orders are moot

In the first appeal, mother challenged the juvenile court's January 30, 2006, order setting a plan of guardianship, and the concomitant stay of that plan pending receipt of grandmother's guardianship papers. In her opening brief, she argued that the juvenile court exceeded its jurisdiction by ordering a permanent plan of guardianship without appointing a qualified guardian. Because no guardian could be appointed at the

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[3] A copy of the juvenile court's August 17, 2006, minute order is not part of the appellate record. On September 18, 2006, we granted DCFS's request to take additional evidence on appeal. Thus, this minute order is properly before us.

permanent plan hearing, mother claimed that substantial evidence did not support the juvenile court's findings and order that a permanent plan of guardianship was in Jennifer's best interests. She also asserted that the juvenile court erred by staying its permanent plan. DCFS responded in part by filing a motion to dismiss mother's appeal "on the grounds that there was no operational order of legal guardianship in effect." In its respondent's brief, DCFS also argued that the juvenile court did not abuse its discretion by staying its order of a plan of guardianship pending receipt of the proper guardianship papers.

In light of the August 17, 2006, order of guardianship, these procedural issues are moot.[4] An order of guardianship is now in place, with grandmother being the appointed guardian. Accordingly, we need not address mother's contentions that (1) the juvenile court erred by ordering a plan of guardianship without appointing a guardian, and (2) the juvenile court erred by staying that order pending receipt of grandmother's guardianship papers.

We thus turn to the merits of mother's appeal from the juvenile court's order of guardianship and appointing grandmother as Jennifer's legal guardian.

B. Applicable law and standard of review

Section 366.26, subdivision (b) provides, in relevant part: "At the [permanent plan] hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference: [¶] (1) Terminate the rights of the parent or parents and order that the child be placed for adoption. . . . [¶] . . . [¶] (3) Appoint a legal guardian for the child and

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[4] The same analysis applies to mother's appeal from the juvenile court's July 31, 2006, order.

order that letters of guardianship issue. [¶] (4) Order that the child be placed in long-term foster care."

The appeal from an order by the juvenile court appointing a legal guardian is reviewed for an abuse of discretion. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 803–804.)

C. The juvenile court did not abuse its discretion in ordering a legal guardianship for Jennifer and appointing grandmother as Jennifer's guardian

Mother asserts that as a result of an improper investigation, the juvenile court appointed an inappropriate guardian for Jennifer. This argument has been waived by failing to raise this objection, either to the juvenile court or to the appellate court, in a timely fashion. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811.)

When Jennifer was removed from mother's custody in February 2004, she was placed with grandmother. At that time, mother did not object to the placement. In fact, just three days after Jennifer's detention, mother stipulated to the fact that Jennifer could reside at either the Orange County or Long Beach facility. Moreover, at the adjudication/disposition hearing on February 25, 2004, mother indicated that she was "in total agreement with [Jennifer] going with . . . grandmother." At the several review hearings that followed, mother never objected to Jennifer's placement with grandmother. In fact, she informed the social worker prior to the August 2004, hearing that she wanted Jennifer to continue to reside with grandmother. This evidence compels the conclusion that the mother waived her objection to Jennifer's placement with grandmother.

In her reply brief, mother asserts that her appeal is timely because she is challenging the order of guardianship, not the placement order. We cannot agree. The basis of mother's challenge to the order of guardianship is the alleged improper placement of Jennifer. That argument could have been made earlier, but mother declined to do so. In fact, mother even agreed to Jennifer's placement with grandmother. The existence of an order of guardianship, as opposed to simply a placement order, does not

change the fact that mother is attempting to make an argument now that she could have made earlier.

Regardless, we conclude that the investigation was sufficient. Section 361.4, subdivision (b), provides: "Whenever a child may be placed in the home of a relative, or the home of any prospective guardian . . . , the court or county social worker placing the child shall cause a state level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System (CLETS) pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. . . . Within **10 calendar** days following the criminal records check conducted through the [CLETS], the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the [DOJ] to ensure the accuracy of the criminal records check conducted through the [CLETS] and shall review the results of any criminal records check to assess the safety of the home. The [DOJ] shall forward fingerprint requests for federal level criminal history information to the [FBI] pursuant to this section."

Subdivision (c) continues: "Whenever a child may be placed in the home of a relative, or a prospective guardian . . . , the county social worker shall cause a check of the CACI pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the [DOJ]. The [CACI] check shall be conducted on all persons over the age of 18 years living in the home." (§ 361.4, subd. (c).)

At subdivision (d), the statute provides: "(1) If the criminal records check indicates that the person has no criminal record, the county social worker and [the] court may consider the home of the relative, [or] prospective guardian . . . for placement of a child. [¶] (2) If the criminal records check indicates that the person has been convicted

of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the home, unless a criminal records exemption has been granted by the county." (§ 361.4, subds. (d)(1), (d)(2).)

According to mother, grandmother is an inappropriate guardian because Ian S., one of the residents at the Orange County facility where Jennifer resides, was not fingerprinted. We are not persuaded.

At the February 2006 hearing, DCFS explained to the juvenile court difficulties it was having in obtaining the results of the criminal background check for Ian S. Though submitted on February 1, 2006, Ian S.'s livescan was rejected and he had to rescan. Although he livescanned a second time on February 24, 2006, his livescan was again rejected as unreadable. Because his livescans were rejected, as the CSW explained, the DOJ automatically conducted a manual search for him regarding any reportable criminal history. The CSW also advised the juvenile court that she would initiate a manual FBI search via mail.

For the July 2006 hearing, the CSW informed the juvenile court that Ian S.'s livescan fingerprints had again been rejected; as a result, on May 25, 2006, she requested a manual FBI name check for him. Based upon that name check search, no criminal history record existed in the files of the FBI, the CACI, or the Bureau of Identification and Information files.

While it is true that Ian S.'s criminal history was not fingerprint verified, as the CSW explained to the juvenile court, DCFS did the best that it could, and in accordance with DCFS policy.[5] It attempted to conduct a fingerprint check on him, but his fingerprints were rejected at least three times. Thus, the DCFS conducted a manual FBI name check. That report revealed no criminal history for Ian S., and DCFS and the juvenile court were permitted, under these circumstances, to rely upon that report in determining that Jennifer's placement with grandmother was appropriate.

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[5] We hereby grant DCFS's request for judicial notice of the California Department of Social Services Manual of Polices and Procedures.

Mother also argues that the guardianship order should be reversed because DCFS did not fingerprint or livescan the paid staff persons at the Orange County facility. Given that those persons satisfied the background check requirements of Health and Safety Code section 1522, and given grandmother's testimony that all of her employees had submitted to background checks, we conclude that CLETS and livescans were not required for the staff members at the Orange County facility.

Finally, mother asserts that the guardianship order should be set aside because DCFS did not conduct proper background checks on the residents and staff persons at grandmother's Long Beach facility. As mother concedes in her appellate briefs, Jennifer's primary home is the Orange County home. Because Jennifer does not reside at the Long Beach facility, no background checks were required.

II. *ICWA Notice*

A. ICWA Notice Requirements

"The ICWA, enacted by Congress in 1978, is intended to 'protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.' [Citation.] 'The ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource.' [Citation.]

"'The ICWA confers on tribes the right to intervene at any point in state court dependency proceedings. [Citations.] "Of course, the tribe's right to assert jurisdiction over the proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending." [Citation.] "Notice ensures the tribe will be afforded the opportunity to assert its rights under the [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." [Citation.]' [Citation.]" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 173–174; see also *In re H.A.* (2002) 103 Cal.App.4th 1206, 1210.)

B. Notice Was Defective Under the ICWA

The ICWA contains the following notice provision: "In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of

parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding." (25 U.S.C. § 1912(a).)

As DCFS concedes, the ICWA notice requirement was triggered. Unfortunately, DCFS did not provide adequate notice to the Blackfeet Tribe. Thus, it correctly concedes that its failure to provide sufficient notice violated the ICWA. That error, however, does not compel reversal. (*In re Brooke C.*, *supra*, 127 Cal.App.4th at pp. 384–385 [holding that the failure to comply with ICWA's notice requirements only subjects an order terminating parental rights to reversal].)

"The lack of statutory notice nonetheless requires a limited remand to the juvenile court for [DCFS] to comply with the notice requirements of the ICWA, with directions to the juvenile court depending on the outcome of such notice. If, after proper notice is given [to the Blackfeet Tribe] under the ICWA, [Jennifer] is determined not to be an Indian child and the ICWA does not apply, prior defective notice becomes harmless error. [Citation.] In this event, no basis exists to attack a prior order because of failure to comply with the ICWA. . . . Alternatively, after proper notice under the ICWA, if [Jennifer] is determined to be an Indian child and the ICWA applies to these proceedings, [mother] can then petition the juvenile court to invalidate orders which violated title 25 United States Code sections 1911, 1912, and 1913. (25 U.S.C. § 1914; Cal. Rules of Court, [former] rule 1439(n)(1).)" (*In re Brooke C.*, *supra*, 127 Cal.App.4th at p. 385.)

DISPOSITION

The juvenile court orders are affirmed and the matter is remanded for the DCFS to comply with notice requirements of the ICWA. After the Blackfeet Tribe receives proper notice under the ICWA, if Jennifer is determined to be an Indian child and the ICWA applies to these proceedings, mother is then entitled to petition the juvenile court to invalidate orders which violated title 25 United States Code sections 1911, 1912, and 1913. (See 25 U.S.C. § 1914; Cal. Rules of Court, rule 5.664(n)(1) [former rule 1439(n)(1)].)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ